

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA

BRIAN JAMES HUFFSTICKLE,)	CIVIL ACTION NO. 0:07-81-MJP
)	
Plaintiff,)	
)	
vs.)	
)	
CLAYTON MOBILE HOMES; AND)	
CLAYTON MOBILE HOMES,)	
LANCASTER, S.C.; AND BOB)	
STURGILL, CLAYTON MOBILE)	
HOMES, LANCASTER, S.C.)	

Defendant.

The plaintiff, Brian Huffstickle, filed the instant action against Clayton Mobile Homes (which is apparently a Tennessee Corporation), Clayton Mobile Homes in Lancaster, S.C., and Bob Sturgill, an employee of Clayton Mobile Homes in Lancaster, S.C. The plaintiff alleges that Clayton Mobile Homes failed to properly assemble his house which caused the rapid growth of mold. He seeks damages for personal injury to himself and his family due to the mold growth and damages for the repair of his home. In addition, the plaintiff seeks a preliminary injunction requiring Clayton Mobile Homes to cover all family living expenses and he seeks to enjoin Vanderbilt Mortgage from foreclosing on his home. It appears that the plaintiff seeks to bring this matter to this court based on 28 U.S.C. § 1332(a).

Pursuant to 28 U.S.C. § 636 and Local Rule 73.02, D.S.C., this matter was referred to Magistrate Judge Bristow Marchant for a report and recommendation. In his report, Magistrate Judge Marchant recommends that the instant action be dismissed due to a lack of diversity jurisdiction. The plaintiff has not objected to the recommendation of the magistrate judge.

The magistrate makes only a recommendation to this Court. The recommendation has no presumptive weight, and responsibility for making a final determination remains with this Court.

Mathews v. Weber, 423 U.S. 261, 270-71, 96 S.Ct. 549, 46 L.Ed.2d 483 (1976). This Court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objection is made, and this Court may “accept, reject, or modify, in whole or in part the findings or recommendations made by the magistrate.” 28U.S.C. § 636(b)(1). This Court may also “receive further evidence or recommit the matter to the magistrate with instructions.” *Id.* In the absence of objections to the Report and Recommendation, this Court is not required to give any explanation for adopting the recommendation. *Camby v. Davis*, 718 F.2d 198 (4th Cir. 1983).

This Court has made a careful review of the pleadings in this matter as well as the recommendation of the magistrate judge. This court is cognizant that the action has been brought by the petitioner *pro se*. This Court is further aware that it is required to construe such *pro se* pleadings liberally to allow for the development of a potentially meritorious claim. *Haines v. Kerner*, 404 U.S. 519, 520, 92 S.Ct. 594, 30 L.Ed.2d. 652 (1972). *Pro se* pleadings are held to a lower standard than those drafted by attorneys. *Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir. 1978). However, the requirement of liberal construction does not mean that the court can ignore a clear failure in the pleading to allege facts which set forth a claim cognizable in a federal district court. *Weller v. Department of Social Services*, 901 F.2d 387 (4th Cir. 1990).

Upon *de novo* review, the Court accepts the recommendation of the magistrate judge. The diversity statute, 28 U.S.C. §1332(a) requires complete diversity of parties and an amount in controversy in excess of seventy-five thousand dollars (\$75,000). Complete diversity mean that no party on one side may be a citizen of the same State as any party on the other side. *See Owen Equipment & Erection Co. V. Kroger*, 437 U.S. 365 (1978). In the underlying action, this court has no diversity jurisdiction because Clayton Mobile Homes of Lancaster, South Carolina and Bob Sturgill, are residents of the State of South Carolina. However, the plaintiff is not without a forum, he can bring this suit in a state Court of Common Pleas. Accordingly, this matter is DISMISSED.

IT IS SO ORDERED.

s/Matthew J. Perry, Jr.
SENIOR UNITED STATES DISTRICT JUDGE

Columbia , South Carolina

March 1, 2007